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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 1042.

LOUISIANA POWER & LIGHT COMPANY,
Petitioner,

versus

SOUTHERN BELL TELEPHONE & TELEGRAPH COMPANY,
Respondent.

BRIEF

Of Respondent in Opposition to Petition for Writ of Certiorari.

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OPINIONS BELOW.

The Court of Appeals' opinion is reported at 309 F. (2d) 181 and is set forth in Petitioner's Appendix A, pp. 22-26. The opinion of the District Court, which is unreported, is set forth in Petitioner's Appendix B, pp. 27-29.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED.

The sole question presented is whether a federal district court, which has jurisdiction of the parties, should nevertheless refuse to adjudicate the rights and obligations of the parties under an agreement within the purview of the Federal Arbitration Act simply because of the pendency in a state court of another suit between the parties in which such federal question has never been raised or decided.

Stated another way, the Petitioner seeks to have reviewed an interlocutory decision of the Court of Appeals holding that the District Court, which otherwise had jurisdiction, should declare the rights of the parties under the Federal Arbitration Act, and that a determination of such rights should not be relegated to a state court.

STATUTES INVOLVED.

The statutory provisions involved are set forth in the Petition.

STATEMENT OF THE CASE

The only facts which were before either of the two courts below are those set out in Respondent's Complaint filed in the District Court (R. 2-15). The Complaint was dismissed on the pleadings and all facts alleged must be accepted as true.

The Complaint alleged diversity of citizenship between the parties and the jurisdictional amount.

The matters which transpired before the filing of the Complaint in the District Court are succinctly stated in the opinion of the Court of Appeals, as follows:

> "Telephone Company and Power Company have, since 1929, operated under an agreement for the joint use of utility poles in Louisiana. This agreement contains indemnity provisions and an arbitration provision, and the real bone of contention between the parties is whether the indemnity provisions in the agreement are to be governed by the arbitration provision set out therein. However, that issue of substantive law is not before us now.
>
> One of the Telephone Company's employees was electrocuted while working on a jointly used pole. Telephone Company discharged its legal obligations under the Louisiana Workmen's Compensation Act. The deceased employee's wife, individually, and as executrix for his minor children, brought a tort suit against Power Company in a Louisiana State Court. Power Company answered and incorporated a third party petition naming Telephone Company as a third party defendant, alleging that Telephone Company and the employee were negligent and that Power Company was not negligent and that, therefore, if judgment should be rendered against Power Company, the

Power Company be given judgment over against Telephone Company under the indemnity provision[4] of the joint use agreement.

Telephone Company took and still urges the position that any indemnity liability as between the two parties to the agreement should be determined by arbitration in accordance with that provision[5] of the agreement. Telephone Company's exceptions to the third-party petition in the state court were overruled and it sought a stay of the third-party action under the provisions of the Louisiana Arbitration Act,[6] but the state court refused to grant the stay. That ruling was affirmed by the Louisiana Court of Appeals and the Louisiana Supreme Court refused certiorari on the ground that Telephone Company would have a remedy by appeal in the event of an adverse judgment on the merits. Rights under the Federal Arbitration Act were not pressed in the state court proceedings."

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[4] The pertinent provision is:

"Each party shall indemnify and hold the other party harmless from all damages for such injuries to the former's employees or the former's own property that are caused by the negligence of both parties hereto or that are not shown to have been caused by the sole negligence of the other party."

[5] "When differences arise in connection with the administration of this agreement, which cannot amicably be settled by the parties hereto, such questions shall be submitted for determination to a Board of Arbitrators to be selected as follows." [A method of selection is set out.]"

[6] La. Rev. Stat. 9:4201 et seq.

Respondent's Complaint also alleged detailed facts describing the interstate character of both companies'[1] operations and specifically alleged that the more than 50,000 poles covered by the joint use agreement are used in the

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[1] Pertinent parts of the Respondent's Complaint are printed in Appendix A, *infra*, pp. 21-22.

carrying on of interstate commerce and, indeed, constitute an integral part of instrumentalities of interstate commerce.[2]

In granting Petitioner's motion to dismiss (see Appendix B of Petition, pp. 27-29), the District Court below assigned three reasons which were summarized by the Court of Appeals (Appendix A to Petition, p. 25) as follows:

> "The District Court here dismissed the complaint before us, saying (1) it was doubtful whether the Arbitration Act was applicable, (2) but if it was state courts could enforce federal rights, and (3) 'the policy against relitigation of issues and principles of comity' counseled restraint in halting 'state court proceedings' to 'enforce a questionable federal right.'"

The Court of Appeals held that the action of the District Court in dismissing Respondent's Complaint was error and the cause was remanded for further proceedings consistent with the Court's opinion.

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[2] A contract of this character is clearly one evidencing a transaction in commerce:

Metro Industrial Painting Corp. v. Terminal Construction Co., 287 F. (2d) 382 (CA-2), Cert. denied 368 U. S. 817;
Texas Eastern Transmission Corp. v. Barnard, 177 F. Supp. 123 (reversed on other grounds, 285 F. (2d) 536 (CA-6));
National Labor Relations Board v. J. G. Boswell Co., 136 F. (2d) 585;
Consolidated Edison Co. v. N. L. R. B., 305 U. S. 197; Cf *Bernhardt v. Polygraphic Co.*, 350 U. S. 198

ARGUMENT.

I.

The Order of the Court of Appeals Being Interlocutory, the Discretionary Writ of Certiorari Should Be Denied.

We recognize that the Court has full power to review by writs of certiorari interlocutory orders of lower federal courts as well as those which are final. However, as has many times been stated by this Court, the use of the writ to review interlocutory orders is sparingly used:

Denver v. N. Y. Trust Co., 229 U. S. 123, 133;
American Construction Co. v. Jacksonville T. & K. W. R. Co., 148 U. S. 372, 384.

In **Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.**, 240 U. S. 251, 258, the Court said:

> "* * * The decree that was sought to be reviewed by certiorari at complainant's instance was not a final one, a fact that of itself alone furnished sufficient ground for the denial of the application: * * *"

The reason for the Court's reluctance to review interlocutory orders by certiorari was well expressed in **United States v. Beatty**, 232 U. S. 463, 468, wherein it was said:

> "* * * Interlocutory rulings not infrequently become of no importance by reason of the final result or of intervening matters, and that may be true here. * * *"

There has been no trial of the factual issues tendered by the Respondent's Complaint and, in fact, no answer has been filed by Petitioner in response to the allegations of the Complaint. The course of the trial of such issues

may possibly change the character of the case. Also, as the Court of Appeals pointed out in its opinion:

> "* * * The state court suit, as far as we are advised, has not yet reached a final hearing on the merits and it may be that it will be decided by that court that the heirs and representatives of Telephone Company's employee are not entitled to recover from Power Company. In that event Power Company and Telephone Company will have no controversy to arbitrate" (Appendix A to Petition, p. 25).

This Court, in **SS Monrosa v. Carbon Black Export**, 359 U. S. 180, 184, pointed out the danger of deciding issues posed abstractly, saying:

> "* * * Examination of a case on the merits, on oral argument, may bring into 'proper focus' a consideration which, though present in the record at the time of granting the writ, only later indicates that the grant was improvident. See Rice v. Sioux City Memorial Park Cemetery, Inc., supra (349 U. S. at 73). While this Court decides questions of public importance, it decides them in the context of meaningful litigation. Its function in resolving conflicts among the Courts of Appeals is judicial, not simply administrative or managerial. Resolution here of the extent to which these bill of lading provisions may be given effect by our courts can await a day when the issue is posed less abstractly."

Furthermore, the Petitioner would not be prejudiced if the writ of certiorari is denied in this case. If, after trial, a judgment should be entered against Petitioner, it would have an opportunity for review of the questions it seeks to raise at this time:

Toledo Scale Co. v. Computing Scale Co., 261 U. S. 399, 418;

Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U. S. 251, 258;

Panama Railroad Co. v. Napier Shipping Co., 166 U. S. 280, 284.

II.

No Conflict of Decisions Exists.

The Petition asserts that the decision of the Court of Appeals conflicts with certain decisions of this Court, namely: **Utah v. Wycoff Co.**, 344 U. S. 237; **Stoner v. New York Life Insurance Company**, 311 U. S. 461, and **Angel v. Bullington**, 330 U. S. 183.

In support of this claimed conflict, Petitioner tears from context certain quotations from the above mentioned decisions. However, when the facts and the actual decision in the cases are considered, it becomes clear that they are completely inapposite.

The **Wycoff** case is discussed on pages 10 and 11 of the Petition. In that case, a suit was brought in a federal district court seeking a declaration that the company was engaged solely in interstate commerce, and that hence it was immune from regulation by the Public Service Commission of Utah. In the opinion of the court the record did not disclose that there were any presently existing controversies between the company and the Commission. For aught that appeared, Wycoff was merely seeking under the guise of a declaratory judgment an advisory opinion which would stand it in good stead in the event the Commission should in the future apply its regulatory powers to the company. Under such circumstances, this court held that the case was not a proper one for declaratory relief. The court stated:

> "The complainant in this case does not request an adjudication that it has a right to do, or to have,

> anything in particular. It does not ask a judgment that the Commission is without power to enter any specific order or take any concrete regulatory step. It seeks simply to establish that, as presently conducted, respondent's carriage of goods between points within as well as without Utah is all interstate commerce. One naturally asks, 'So what?' To that ultimate question no answer is sought" (344 U. S. 244).

In the present case, there is a live, concrete controversy between the Petitioner and the Respondent; the Respondent asserting that any right of the Petitioner to indemnity must be determined by a Board of Arbitration and the Petitioner, on the other hand, asserting that the question of indemnity should be decided by a jury under the Petitioner's third party petition filed in the state court case.

In **Wycoff** Mr. Justice Jackson, after deciding that there was no justiciable issue, expressed doubt whether there was federal-question jurisdiction in the District Court. It is from this portion of the opinion that Petitioner quotes. But after this discussion Mr. Jusfice Jackson added:

> "Since this case should be dismissed in any event, it is not necessary to determine whether, on this record, the alleged controversy over an action that may be begun in state court would be maintainable under the head of federal-question jurisdiction . . . ." (344 U. S. 248-249).

The remarks of Justice Jackson go to the jurisdiction of the federal district court in a "federal-question" case rather than the discretion to be exercised by a district court where jurisdiction exists.

The jurisdiction of the District Court in the present case did not depend on the existence of federal-question jurisdiction, the basis of the Court's jurisdiction being predicated on diversity.

The only questions involved in the **Stoner** case were state law questions. Previous to the filing of the federal court suit, there had been litigation in the state courts between the same parties. The Circuit Court of Appeals had refused to consider itself bound by decisions of the Kansas City Court of Appeals in the earlier suits. In reversing, Mr. Justice Murphy, speaking for the Court, said:

> "We are of opinion that the Circuit Court of Appeals erred in failing to follow the two decisions of the Kansas City Court of Appeals in earlier suits between **the same parties involving the same issues of law and fact**" (Emphasis added). 311 U. S. 467.

In the case now under consideration, the law involved is federal substantive law and there has been absolutely no adjudication by the state court of such law, and even if there had been, there is nothing in **Erie v. Tompkins**, 304 U. S. 64, which would compel the federal court to follow such decisions.

The last Supreme Court case relied on by Petitioner in his effort to show a conflict is this Court's opinion in **Angel v. Bullington**, supra, which is discussed on pages 18-20 of the Petition. In this case the Court applied the doctrine of *res adjudicata* under the following circumstances. Bullington, a citizen of Virginia, sold land in Virginia to Angel, a North Carolina citizen. The full purchase price was not paid and to secure the balance a deed of trust was executed. Angel defaulted and the trustee sold the land. The proceeds were applied on the unpaid balance. A suit for a deficiency judgment was filed by Bullington in a North Carolina state court. Angel, in that suit, asserted that such actions were barred by a North Carolina statute. Bullington raised in both the lower and state supreme court the question of the constitutionality of this statute under the Federal Constitution. After a final judgment by the state supreme court refusing to hold

the statute unconstitutional, no petition for certiorari was filed with this court. Later another suit was filed in the federal district court by Bullington against Angel. This court held that in view of the previous state court litigation wherein the federal question had been definitely raised, although not discussed in the state supreme court's opinion, the doctrine of *res adjudicata* barred subsequent federal court action. The court said:

> "Here, claims based on the United States Constitution were plainly and reasonably made in the North Carolina suit. The North Carolina Supreme Court met these claims" (330 U. S. 188, 189).

In the instant case, the federal right which Respondent is seeking to protect was neither raised, considered nor passed upon by any of the Louisiana state courts. Indeed, the order of the state supreme court in denying the writ of certiorari is merely interlocutory even as to the state law question, since in denying the writ, that court stated:

> "Relator has a remedy by appeal in the event of an adverse judgment on appeal" (Petition, p. 6).

In addition to the differences already pointed out between **Angel** and the instant case, Justice Frankfurter, writing the majority opinion, stated:

> "We start with the fact that the prevailing rule as to res judicata is settled law in North Carolina. An adjudication bars future litigation between the same parties not only as to all issues actually raised and decided but also as to those which could have been raised * * *" (330 U. S. 186).

In Louisana, unlike North Carolina, res judicata applies only to issues actually raised and decided and not to those which could have been raised. In **Woodcock v. Baldwin**, 110 La. 270, 275, 34 So. 440, 441, the Supreme Court of Louisiana stated:

> "The doctrine of the common law courts that *res judicata* includes not only everything pleaded in a cause, but even that which might have been pleaded, does not obtain generally under our system.
>
> Here in Louisiana the doctrine is much more restricted than in common law States. * * *"

The ruling in the **Woodcock** case has been followed time after time by the Louisiana Supreme Court. See for example the following cases:

Schlater v. Le Blanc, 121 La. 919, 924, 46 So. 921, 922;
Tennent v. Caffery, 163 La. 976, 989, 113 So. 167, 172;
Woodruff v. Producers Oil Co., 142 La. 368, 373, 76 So. 803, 804;
Quarles v. Lewis, 226 La. 76, 81, 75 So. (2d) 14, 16;
Tucker v. N. O. Laundries, Inc., 238 La. 207, 222, 114 So. (2d) 866, 872.

The Court of Appeals for the Fifth Circuit has likewise recognized that the doctrine of *res adjudicata* is applied differently in Louisiana than in common law states. See:

Union Producing Co. v. Driskell, 117 F. (2d) 229 (CA-5);
Opelousas-St. Landry Securities Co. v. United States, 66 F. (2d) 41 (CA-5);
International Paper Co. v. Maddox, 203 F. (2d) 88 (CA-5).

In addition to the claimed conflict between the decision of the court below and the Supreme Court decisions just discussed, Petitioner asserts a conflict between the Court of Appeals' opinion and the decisions of the Court of Appeals for the Second Circuit in **National Cancer Hospital of America v. Webster**, 251 F. (2d) 466 (CA-2), decisions of the Court of Appeals for the Ninth Circuit in **Shell Oil Co. v. Frusetta**, 290 F. (2d) 689 (CA-9), and **H. J. Heinz Co. v. Owens**, 189 F. (2d) 505 (CA-9), and a decision of another panel of the Circuit Court of Appeals

for the Fifth Circuit in the case of **McLain v. Lance**, 146 F. (2d) 341 (CA-5). The issues and facts involved in each of these cases show that they likewise are inapposite and do not conflict with the decision of the Court of Appeals in this case.

In the **Cancer Hospital** case the Second Circuit affirmed a judgment of the district judge dismissing a complaint for lack of jurisdiction over the subject matter. The facts were simply these: The National Cancer Hospital was a citizen of Michigan. Webster was a citizen of New York. The hospital made a contract with De Haan, Inc., under which De Haan was to collect funds in support of the hospital's activities. The State of New York filed an action in the Supreme Court of New York against the hospital, De Haan, Inc., and others to forbid any further solicitation of funds on the ground that the hospital had no certificate of authority to do business within New York. This suit came on for trial in the New York Supreme Court and during the trial the state demanded the appointment of a receiver in addition to its original demand for injunction. The state court appointed Webster as receiver and directed him to distribute all funds he collected to approved cancer organizations. On appeal to the Appellate Division of the Supreme Court the decree of the trial court was affirmed with a minor modification. The judgment as so modified was affirmed by the New York Court of Appeals. After this litigation in the state courts the declaratory judgment action was filed in the federal court. The relief demanded "was a declaratory judgment that the assets in the hands of the receiver were property of the plaintiff." There were no federal issues involved and the only issues raised in the federal court action were state issues which had either already been decided by the state court or would be decided. The court rightly decided that this was nothing more than a bald attempt to retry in federal court state issues.

Respondent, by its suit filed in the District Court below, is not attempting to retry any state law issue involved in the Louisiana state court proceedings. Respondent is asking an adjudication of the rights and obligations of the Petitioner and the Respondent under federal law, to wit, the Federal Arbitration Act.

In **Shell Oil Co. v. Frusetta**, supra, Appellant Shell and appellees, as lessee and lessors of certain oil lands, had been jointly defending claims pressed by a group of plaintiffs in the California state courts involving the title to said lands. Appellees announced in open court that they were going to seek permission to file crossbills against Shell based on alleged oral agreements as to who would pay for defending adverse claims, etc. Three days before such crossbills were filed, Shell sought a declaratory judgment, based entirely on state law, from a United States District Court on the same issues. The following statement appears in the Court's decision:

> "* * * It is agreed between the parties that the same identical issues are raised in Shell's complaint for declaratory judgment as appear in the 13 cross-complaints filed by the appellees in the state court. * * * * * * The court [United States District Court] also stated that it felt the substantive questions raised were so clearly connected with the pending state litigation that the state court was the most satisfactory forum in which to hear the matter * * *" (290 F. (2d) 691).

In the instant case, the state court certainly is no better equipped than a federal court to interpret and apply a federal statute and federal decisional law.

In **Heinz Company v. Owens**, supra, a state court had rendered a final judgment against the federal court plaintiff in favor of the federal court defendant from which

no appeal was prosecuted. Some five years after the entry of this final decree the federal court plaintiff was cited for contempt, the grounds of the citation being that he had violated the final decree of the state court. It was after these events had transpired that the federal court suit for a declaratory judgment was filed. The Court of Appeals, in affirming the District Court's dismissal of the complaint, in the last paragraph of its opinion stated:

> "All these factors considered, we conclude that the granting of injunctive relief in this case is prohibited by statute and the granting of declaratory relief would constitute a plain abuse of discretion * * *" (189 F. (2d) 509).

In the last analysis, the declaratory judgment action in the **Heinz** case was no less than an attempt to review in the federal district court the validity of a final order of a state court. A federal district court has no such appellate jurisdiction.

McLain v. Lance, supra, involved a dispute between "Houston pilots" and the "Galveston pilots" as to which group had the right to pilot "refuge vessels" in the waters of Galveston Bay. The suit was between two groups of citizens of Texas and involved the construction of Texas statutes. The courts found that these statutes had been construed and the rights of the parties determined in the state courts of Texas, including an appeal to the Supreme Court of Texas, before the unsuccessful "Houston pilots" filed their libel in personam in the federal district court. The court stated:

> "* * * and it [the United States District Court] could have and doubtless should have, refused to render a declaratory judgment in a case where the state courts of Texas, having concurrent—and maybap exclusive—jurisdiction of the same subject matter

and of the same parties, had theretofore declared the rights of the parties to pilotage over the waters involved.

Moreover, the rights of the contending parties stemmed from local statutes of the State of Texas, rather than from maritime contracts of vessels to pay for pilotage services, or because, forsooth, the Navy or Coast Guard might, or might not, in the future make some order or regulation that would affect the parties. Courts do not concern themselves to decide abstract questions" (146 F. (2d) 343).

The underlying reason why federal courts, in the exercise of discretion, refuse to entertain declaratory judgment suits, when the same issues are pending in a state court action, is because state issues may be more economically and appropriately decided by the state court. This basic reason for the exercise of such discretion is something the Petitioner completely overlooks or fails to recognize. The rule is not intended to afford federal courts an excuse to force litigants to adjudicate federal issues in state courts, particularly where such issues have not been raised or decided in state court proceedings. This is made clear by the opinion of this Court in **Brillhart v. Excess Insurance Company of America**, 316 U. S. 491, 495, wherein the court stated:

> "* * * Ordinarily it would be uneconomical as well as vexatious for a federal court to proceed in a declaratory judgment suit where another suit is pending in a state court presenting the same issues, **not governed by federal law**, between the same parties. Gratuitous interference with the orderly and comprehensive disposition of a state court litigation should be avoided." (Emphasis added.)

Other than the decision by the District Court below, Respondent can find no decision holding that a federal

court, having jurisdiction of the parties, should abdicate its authority and force a litigant to try his undecided federal law questions in a state court.

III.

The Decision Below is Clearly Correct.

Before the decision of this Court in **Bernhardt v. Polygraphic Company**, 350 U. S. 198, it was thought by many that the provisions of the Federal Arbitration Act were merely procedural. However, in **Bernhardt** this Court held that the provisions of the Act created a substantive right to arbitration whenever the contract evidences a transaction involving commerce. The Court stated:

> "* * * The nature of the tribunal where suits are tried is an important part of the parcel of rights behind a cause of action. The change from a court of law to an arbitration panel may make a radical difference in ultimate result. * * *" (350 U. S. 203.)

In **Bernhardt** jurisdiction was predicated on diversity, and the court finding that the contract in question was not one involving interstate commerce, held that whether the dispute was arbitrable or not must be determined by resort to state law.

After the **Bernhardt** case the Court of Appeals for the Second Circuit decided two cases where the contracts in question did involve interstate commerce: **Robert Lawrence v. Devonshire, Inc.**, 271 F. (2d) 502 (CA-2). (Certiorari granted 362 U. S. 909; Certiorari dismissed 364 U. S. 801); and **Metro Industrial Painting Corp. v. Terminal Const. Co.**, 287 F. (2d) 382 (CA-2) (Certiorari denied, 368 U. S. 817). Both of these were diversity cases.

In each of these cases, the Court of Appeals held that in view of the substantive nature of the rights created by the Federal Arbitration Act, national law and not state

law is controlling. Judge Medina, in writing the majority opinion in **Robert Lawrence v. Devonshire, Inc.**, supra, stated:

> "* * * The opinion of Mr. Justice Douglas in Bernhardf summarizes nicely the manifold effects of such agreements. We need not belabor them here. The crucial point is that the 'nature of the tribunal where suits are tried is an important part of the parcel of rights behind a cause of action.' See 350 U. S. at page 203, 76 S. Ct. at page 276. Whether the bargain evidenced by the contract or agreement is or is not valid cannot differ essentially from the question of whether any other meeting of the minds of the parties will be recognized as having created certain rights. And the same may be said of the rules or principles to be evolved in connection with the construction and interpretation of the agreement (271 F. (2d) 408).
>
> * * * * * * * *
>
> "We, therefore, hold that the Arbitration Act in making agreements to arbitrate 'valid, irrevocable, and enforceable' created national substantive law clearly constitutional under the maritime and commerce powers of the Congress and that the rights thus created are to be adjudicated by the federal courts whenever such courts have subject matter jurisdiction, including diversity cases, just as the federal courts adjudicate controversies affecting other substantive rights when subject matter jurisdiction over the litigation exists. We hold that the body of law thus created is substantive not procedural in character and that it encompasses questions of interpretation and construction as well as questions of validity, revocability and enforceability of arbitration agreements affecting interstate commerce or maritime affairs, since these two types of legal questions are inextricably intertwined." (271 F. (2d) 409).

In **Metro Industrial Painting Corp.**, the Court stated:

> " " " Moreover, contrary to respondents' contention, Devonshire held that federal rather than local law governs 'questions of interpretation and construction as well as questions of validity, revocability and enforceability of arbitration agreements affecting interstate commerce " " " since these two types of legal questions are inextricably intertwined.' 271 F. 2d 402, at page 409. The issue of arbitrability, i. e., whether a particular dispute is covered by an arbitration clause, being a question of 'interpretation and construction,' the court below was correct in not considering state cases as being binding authority, and in determining the issue according to the 'liberal' policy recognized in Devonshire" (287 F. (2d) at 385).

The District Court, in dismissing Respondent's complaint, relied on the pendency of the state court case and the fact that Respondent could raise the federal question, i. e., the applicability of the Arbitration Act in the state court proceeding.

While it is true that such issue could be raised in the state court, Respondent had an option to present that issue for adjudication by a federal court where federal court jurisdiction otherwise exists, as it clearly does in the present case. The right of a litigant to have its substantive federal rights adjudicated by a federal court which has jurisdiction of the parties is fundamental under our federal system. See **Southern Pacific Co. v. Bogert**, 250 U. S. 483, and **Nuveen v. Board of Public Instruction**, 88 F. (2d) 475 (CA-5).

The sole issue raised by Respondent's Complaint, which was dismissed by the District Court, is the applicability of the Federal Arbitration Act to the agreement between the parties. This issue must be decided solely by resort to federal substantive law. The District Court's dismissal of

this case had the direct effect of transferring an exclusively federal issue to the state court for decision. Respondent respectfully asserts that such action was not warranted by any recognized principles of judicial discretion, comity or abstention. It was outright abdication. The decision of the Court of Appeals in reversing the action of the District Judge is clearly correct.

CONCLUSION.

For the foregoing reasons, the Petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A.

In the United States District Court,
Eastern District of Louisiana,
New Orleans Division.

No. 11,796.

Southern Bell Telephone and Telegraph Company,

Plaintiff,

v.

Louisiana Power and Light Company,

Defendant.

I.

This action is brought for a declaratory judgment pursuant to Title 28, U. S. C., § 2201-2202, and Rule 57, Rules of Civil Procedure, and to protect legal rights of plaintiff and the jurisdiction of this Court under the Federal Arbitration Act, 61 Stat. 669; 9 U. S. C., §1 et seq.

* * * * * * * * *

IV.

Telephone Company, a wholly-owned subsidiary of American Telephone and Telegraph Company, is an interstate carrier, subject to the jurisdiction of the Federal Communications Commission and it furnishes telephone communications to more than 4,000,000 subscribers. During the calendar year 1960, Telephone Company handled more than 10,000,000 interstate long distance calls which originated in the State of Louisiana, of which a substantial number were transmitted in part on wires or cables located on poles covered by the Joint Use Agreement described in paragraph VI below.

V.

Power Company, a wholly-owned subsidiary of Middle South Utilities, Inc., is engaged in generating, purchasing, selling and exchanging electrical energy and in distributing electrical energy to consumers in a large area in Louisiana. The area served by Power Company includes over 500 communities where it has more than 200,000 residential customers and more than 24,000 commercial and industrial customers. Power Company and Arkansas Power and Light Company, Mississippi Power and Light Company, and New Orleans Public Service, Inc., which are also subsidiaries of Middle South Utilities, Inc., have power pooling arrangements whereby all generating and transmitting facilities are combined and are operated as one coordinated or integrated system. Under this arrangement and by purchasing and selling power from other utilities, a substantial portion of the energy generated by Power Company is transmitted in interstate commerce to states other than Louisiana and a substantial portion of the energy distributed by Power Company in Louisiana is generated and transmitted in interstate commerce from other states.

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